

REMARKS

Claims 1-27 are all the claims pending in the application. By this Amendment, Applicant amends claims 1, 2, 10, and 15 to further clarify the invention, claims 6-9 to cure minor informalities, and claims 14 and 20 for conformity with the amended independent claims. Claim 21 is rewritten into its independent form. In addition, in order to provide more varied protection, Applicant adds claims 22-27, which are clearly supported throughout the specification.

I. Summary of the Office Action

Claims 6-9 and 21 are objected to for minor informalities. Claims 1, 2, 4, 6-11, 15, and 16 are rejected under 35 U.S.C. § 102(b) and claims 3, 5, 12, 13, and 17-19 are rejected under 35 U.S.C. § 103(a). Claims 14, 20, and 21 contain allowable subject matter.

II. Claim Objections

Claims 6-9 and 21 are objected to because of minor informalities. Applicant respectfully requests the Examiner to withdraw these objections to the claims in view of the self-explanatory claim amendments being made herein.

III. Claim Rejections under 35 U.S.C. § 102

Claims 1, 2, 4, 6-11, 15, and 16 are rejected under 35 U.S.C. § 102(b) as being anticipated by newly cited U.S. Patent No. 5,367,523 to Chang et al. (hereinafter “Chang”). Applicant respectfully traverses these grounds for a rejection in view of the following comments.

Independent claim 1, among a number of unique features, recites: “wherein only said data sink reports to said data source on said network status information of said communications network in a neighbourhood around the data sink, wherein no intermediate network node reports

to said data source on said network status information of said communications network, and wherein said communications network is a heterogeneous network comprising at least two different networks.” The Examiner contends that claim 1 is directed to a network status reporting method and is anticipated by Chang. Specifically, the Examiner contends that Chang’s disclosure of the communication between the end nodes connected to the users anticipates the above-quoted unique features of claim 1 (*see* pages 1 and 4 of the Office Action). Applicant respectfully disagrees.

To be an “anticipation” rejection under 35 U.S.C. § 102, the reference must teach every element and recitation of the Applicant’s claims. Rejections under 35 U.S.C. § 102 are proper only when the claimed subject matter is identically disclosed or described in the prior art. Thus, the reference must clearly and unequivocally disclose every element and recitation of the claimed invention. MPEP § 2131.

Chang discloses endnodes 12 being connected to users and transmitting data via a data packet network 10. The data packet network includes a number of nodes 11 (Figs. 1 and 2). The receiver (endnode 12) reports to the source (another endnode 12) the minimum of the two: the rate at which the receiver accepts data from the network 10 and the rate at which the receiver can deliver data to the end user and the end user connected to the receiver can process data (col. 7, lines 20 to 26 and col. 8, lines 6 to 24).

However, Chang fails to disclose or even remotely suggest a heterogeneous network having two or more different networks. There is, no disclosure or suggest of how the end node 12 is connected to the end user 15 (Fig. 1). In fact, the end user 15 may be connected to the end

node 12 via cable. In other words, in Chang, only the packet network is disclosed. Since Chang fails to teach or suggest a heterogeneous network having two or more different networks, the rejection is improper as it lacks “sufficient specificity” required under 102. “[A]nticipation under § 102 can be found only when the reference discloses exactly what is claimed and that where there are differences between the reference disclosure and the claim, the rejection must be based on § 103 which takes differences into account.” *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985); MPEP § 2131.

The Examiner contends that col. 6, lines 16 to 20 of Chang discloses the heterogeneous network (*see* page 4 of the Office Action). Col. 6, lines 16 to 20 of Chang recite:

Each of end nodes 12 comprises either a source of digital data to be transmitted to another end node, a utilization device for consuming digital data received from another end node, or both. Users 15 of the packet communications network 10 of FIG. 1 utilize an end node device 12 connected to the local network node 11 for access to the packet network 10. The local network node 11 translates the user's data into packets formatted appropriately for transmission on the packet network of FIG. 1 and generates the header which is used to route the packets through the network 10.

As is visible from the passage above, Chang only discloses that the user 15 of the packet network 10 utilizes an end node device 12 to translate and transport user data in the packet network 10. However, in Chang, the end node device 12 may be a modem connected to a user 15 via a wire. In other words, in Chang, there is no disclosure or suggestion of a heterogeneous network having two or more different networks.

Therefore, for at least these exemplary reasons, Applicant respectfully submits that claim 1 is patentably distinguishable from Chang. Applicant respectfully requests the Examiner to withdraw this rejection of claim 1.

Independent claim 2 contains features that are similar to the features argued above with respect to claim 1, and those arguments are respectfully submitted to apply with equal force here. For at least analogous exemplary reasons, therefore, Applicant respectfully requests the Examiner to withdraw this rejection of the independent claim 2 and its dependent claims 3-9 and 16.

Independent claims 10 and 15 are patentable at least by virtue of their recitation “wherein the first network comprises a digital subscriber line and the second network comprises a frame relay network” and “wherein the second communication network is a frame relay network,” respectively. Claims 11-13 and 17-19 are patentable at least by virtue of their dependency on the independent claims 10 or 15.

IV. Claim Rejections under 35 U.S.C. § 103

Claims 3, 5, 12, 13, and 17-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Chang in view of U.S. Patent No, 6,963,538 to Giroux et al. (hereinafter “Giroux”). Applicant respectfully traverses these grounds of rejection in view of the following comments.

Claims 3, 5, 12, 13, and 17-19 depend on claims 2, 10, and 15. As explained above, Chang does not disclose or suggest all of the unique features of the independent claims 2, 10, and 15. Giroux does not cure the deficient disclosure of Chang. Giroux discloses using RM-cells associated with an ABR technique of the ATM network. Giroux does not disclose or suggest a heterogeneous network having two different networks such as having one network being a frame relay. In short, Giroux does not cure the deficient disclosure of Chang. Accordingly, claims 2,

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10, and 15 are patentable over the prior art of record. Claims 3, 5, 12, 13, and 17-19 are patentable at least by virtue of their dependency on claim 2, 10, or 15.

V. Allowable Subject Matter

Applicant thanks the Examiner for indicating that claims 14, 20, and 21 contain allowable subject matter. Applicant respectfully hold the rewriting of claims 14 and 20 in abeyance until arguments presented with respect to independent claims 10 and 15 have been reconsidered. Claim 21 is rewritten in its independent form. Accordingly, it is now appropriate for the Examiner to allow claim 21.

VI. New Claims

In order to provide more varied protection, Applicant adds claims 22-24 and 25-27, which are patentable at least by virtue of their dependency on claims 1 and 2, respectively.

VII. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly invited to contact the undersigned attorney at the telephone number listed below.

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Any fee due under 37 U.S.C. § 1.17(a) is being paid via the USPTO Electronic Filing System (EFS). The USPTO is also directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.


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